

No. 18-1093

In the Supreme Court of the United States

CITY OF JOLIET, ILLINOIS, ET AL.,

Petitioners,

v.

ELIJAH MANUEL,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit**

SUPPLEMENTAL BRIEF FOR PETITIONERS

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This Court should grant the certiorari petition and set this case for plenary briefing and argument rather than remand the matter for consideration in light of *McDonough v. Smith*, No. 18-485 (U.S. June 20, 2019). *McDonough* carefully limits its accrual ruling to due process claims like the one raised in that case, without deciding the distinct, *Fourth Amendment* accrual question this Court left open in *Manuel v. Joliet*, 137 S. Ct. 911 (2017) (“*Manuel I*”). That question, “of daily importance to the nation’s local governments and the public officers and attorneys who serve them,” remains unanswered. Br. for Int’l Mun. Lawyers Ass’n *et al.* as Amici Curiae in Support of Certiorari in *City of Joliet v. Manuel*, No. 18-1093, at 2. Worse, the Seventh Circuit’s decision on remand from *Manuel I* (“*Manuel II*”) is not only impossible to square with decisions of this Court, but its unprecedented holding means there are now three distinct, incompatible accrual rules competing for application to the same Fourth Amendment tort. Pet. 11-17. This case provides an ideal vehicle to eliminate the confusion building in the wake of *Manuel I* and left unaddressed by *McDonough*.

ARGUMENT

As the majority and dissent in *McDonough* agreed, “[a]n accrual analysis begins with identifying ‘the specific constitutional right’ alleged to have been infringed.” Op. 4 (quoting *Manuel I*, Pet. App. 27a, in turn quoting *Albright v. Oliver*, 510 U.S. 266, 271 (1994)); see also Dissenting Op. 1 (explaining that “‘the threshold inquiry in a [42 U.S.C.] § 1983 suit’” is “‘identify[ing] the specific constitutional right at issue’”) (quoting *Manuel I*, Pet. App. 27a) (internal quotation marks omitted). It is only “[a]fter

pinpointing that [constitutional] right” that courts then “determine the elements of, and rules associated with, an action seeking damages for its violation.” *Manuel I*, Pet. App. 27a.

McDonough limited its accrual rule to due process claims. The Court “accept[ed] the Court of Appeals’ treatment of McDonough’s claim as one sounding in denial of due process,” Op. 5 n. 2, and addressed the claim solely as one “arising under the Due Process Clause,” *id.* at 4; see also *McDonough v. Smith*, 898 F.3d 259, 269 n.14 (2d Cir. 2018) (distinguishing between accrual for due process claims like McDonough’s and for Fourth Amendment claims like the one in *Manuel I*).

In *Manuel*, in contrast, the question is the accrual date for a *Fourth Amendment* post-process, pretrial detention claim. And as both the majority and dissent recognized in *Manuel I*, Manuel’s accrual date turns on the fact that he is proceeding under the Fourth Amendment, specifically. See Pet. App. 27a n.8; Pet. App. 35a-40a (Alito, J., joined by Thomas, J., dissenting).

Indeed, Justices Alito and Thomas determined that Manuel *may not* delay accrual of his §1983 claim until his criminal proceedings terminated in his favor—the rule *McDonough* now adopts for due process challenges—because unlike the Due Process Clause, the Fourth Amendment is incompatible with a favorable-termination element. These Justices observed the “severe mismatch” generally between malicious prosecution and the Fourth Amendment. Pet. App. 37a. And of particular relevance here, they recognized that “malicious prosecution’s favorable-termination element makes no sense when the claim

is that a seizure violated the Fourth Amendment,” for “[t]he Fourth Amendment, after all, prohibits all unreasonable seizures—regardless of whether a prosecution is ever brought or how a prosecution ends.” Pet. App. 33a. These Justices thus concluded, “[i]f a malicious prosecution claim”—with its delayed accrual rule—“may be brought under the Constitution, it must find some other home, *presumably the Due Process Clause*.” Pet. App. 40a (emphasis added).

In *McDonough*, the Court did precisely what Justices Alito and Thomas proposed. The Court found a home for the favorable-termination accrual rule in the Due Process Clause—under which a §1983 plaintiff “challenge[s] the validity of the criminal proceedings against him,” Op. 9, 12—rather than under the Fourth Amendment, which prohibits seizure without probable cause and provides redress regardless of “how [the] prosecution ends.” Pet. App. 33a.

McDonough thus does not address the critical, Fourth Amendment accrual question, posed but left unresolved in *Manuel I*. The Court there was unanimous that allegedly unlawful post-process, pretrial detention is actionable as a Fourth Amendment tort. But the six-Justice majority expressly declined to decide when such a claim accrues. Pet. App. 30a. Only Justices Alito and Thomas answered that question, holding that Manuel’s Fourth Amendment claim accrued no later than his first appearance in court, making the claim untimely. Pet. App. 32a-33a, 42a-43a.

On remand in *Manuel II*, the Seventh Circuit rejected the accrual rule embraced by Justices Alito

and Thomas, while also rejecting the favorable-termination rule applied in other Circuits. Instead, the Seventh Circuit adopted an unprecedented, continuing-tort theory that Justices Alito and Thomas and other courts have rejected and that is impossible to square with longstanding decisions of this Court. See Pet. 14-22.

As detailed in the City of Joliet's certiorari petition (at 11-17), this leaves three competing accrual rules for the same frequently litigated Fourth Amendment tort: (1) the correct rule, consistent with traditional accrual principles and adopted by Justices Alito and Thomas; (2) the favorable-termination rule that these Justices rejected as incompatible with the Fourth Amendment but several Circuits now apply; and (3) the Seventh Circuit's newly announced, continuing-tort rule, which Justices Alito and Thomas and other courts have expressly rejected.

McDonough carefully limits its analysis and holding to the due process claim raised in that case and therefore leaves all of these competing rules in play for Fourth Amendment claims. Only this Court can resolve the ongoing confusion over this important and recurring issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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